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OFFICE OF PETITIONS

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In re Patent No. 7,529,583

Brockway, et al.

Issue Date: May 5, 2009

Application No. 10/756,188

Filed: January 12, 2004

Attorney Docket No. 22570-032001

:
: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: AND NOTICE OF INTENT
: TO ISSUE CERTIFICATE
: OF CORRECTION

This is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT" filed March 26, 2009. Pursuant to patentees' duty of good faith and candor to the Office, patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of determination of the patent term adjustment is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred seventeen days (217) days.

Patentees are given **THIRTY (30) DAYS or ONE MONTH, whichever is longer**, from the mail date of this decision to respond to this decision. No extensions of time will be granted under 37 CFR 1.136.

On January 2, 2009, a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) was mailed indicating that the patent term adjustment to date was 266 days (514 days of Office delay - 248 days of applicant delay). On March 26, 2009, patentees submitted the instant comment. Patentees discloses that they believe that the patent term adjustment indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed January 2, 2009, is longer than appropriate. Specifically, patentees state that:

...Applicants direct the Office's attention to the presence of a Notice of Incomplete Reply mailed subsequent to the

Response to Notice to File Missing Parts filed in June 2004.

Excerpt from Letter Regarding Patent Term Adjustment filed March 26, 2009, page 1

On May 5, 2009, the above-identified application matured into US Patent No. 7,529,583 with a revised patent term adjustment of 266 days.

Further review of the application history reveals that on June 1, 2004, a Notice to File Missing Parts of Non-Provisional Application was mailed requiring payment of the basic filing fee, a surcharge, a properly executed declaration under 37 CFR 1.63, and replacement drawings. Applicants filed a response thereto on June 18, 2004. On July 9, 2004, a Notice of Incomplete Reply was mailed indicating that the response of June 18, 2004, was incomplete in that it did not include replacement drawings. On August 6, 2004, applicants filed replacement drawings to correct the omission in the reply filed on June 18, 2004.

37 CFR 1.704(c)(7) provides that:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(7) Submission of a reply having an omission (§1.35(c)), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the reply having an omission was filed and ending on the date the reply or other paper correcting the omission was filed.

It is undisputed that the response filed June 18, 2004, contained an omission and that replacement drawings correcting the omission were not filed until August 6, 2004. Accordingly, pursuant to 37 CFR 1.704(c)(7), a period of reduction of forty-nine (49) days will be entered, encompassing the period beginning on the day after the date the reply having an omission was filed, June 19, 2004, and ending on the date the reply correcting the omission was filed, August 6, 2004.

In view thereof, the patent should have issued with a revised Patent Term Adjustment of two hundred seventeen (217) days, (514 days of Office delay - 297 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in the calculation of the Patent Term Adjustment, the Office will not assess the \$200.00 application fee under 37 1.18(e). The Office thanks patentee for his good faith and candor in bringing this to the attention of the Office.

This matter is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended, or adjusted, by two hundred seventeen (217) days.

Telephone inquiries regarding this specific matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,529,583 B1

DATED : May 5, 2009

INVENTOR(S) : Brockway, et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (266) days

Delete the phrase "by 266 days" and insert – by 217 days--